

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SCOTT JANASZAK and STORM  
JANASZAK,

Plaintiffs,

v.

WELLS FARGO BANK NA, et al.,

Defendants.

CASE NO. C12-5427 BHS

ORDER GRANTING  
DEFENDANTS' MOTION FOR  
JUDGMENT ON THE  
PLEADINGS AND PLAINTIFFS'  
LEAVE TO AMEND

This matter comes before the Court on Defendants Wells Fargo Bank, N.A. and JPMorgan Chase Bank, N.A.'s ("Defendants") motion for judgment on the pleadings (Dkt. 11). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion and grants leave to amend for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On April 13, 2012, Plaintiffs Scott and Storm Janaszak ("Janaszak") filed a complaint against Defendants and twenty unnamed defendants in Kitsap County Superior

1 Court for the State of Washington. Dkt. 1, ¶ 3. The Janaszaks allege breach of contract;  
2 violations of the Washington Deed of Trust Act, RCW Chapter 61.24 (“DTA”); fraud;  
3 violations of the Washington Consumer Protection Act, RCW Chapter 19.86 (“CPA”);  
4 and Declaratory and Injunctive Relief. *Id.*, Exh. A (“Complaint”).

5 On May 14, 2012, Defendants removed the case to this Court. Dkt. 1.

6 On August 9, 2012, Defendants filed a motion for judgment on the pleadings.  
7 Dkt. 11. On September 10, 2012, the Janaszaks responded. Dkt. 13. On September 14,  
8 2012, Defendants replied. Dkt. 15. On September 18, 2012, the Janaszaks filed a  
9 surreply and requested that the Court strike Defendants’ reply brief. Dkt. 18.

## 10 **II. FACTUAL BACKGROUND**

11 On June 16, 2005, the Janaszaks refinanced their loan and obtained a loan for  
12 \$220,000 from Washington Mutual Bank (hereinafter “WAMU”) for their real property  
13 at 3462 Inlet Lane Southeast, Port Orchard, WA 98366. Complaint, ¶¶ 1 & 8. On March  
14 25, 2011, the Janaszaks filed a petition for relief under chapter 7 of the Bankruptcy Code  
15 in the U.S. Bankruptcy Court for the Western District of Washington. On July 17, 2011,  
16 the bankruptcy court entered a discharge order. After the discharge, a new foreclosure  
17 proceeding occurred and the Janaszaks’ house was scheduled for sale on April 20, 2012.  
18 Complaint, ¶ 85.

## 19 **III. DISCUSSION**

### 20 **A. Request to Strike**

21 The Janaszaks request that the Court strike Defendants’ reply brief because it is  
22 overlength. Dkt. 18. The Janaszaks argue that the length of the reply brief for a motion

1 for judgment on the pleadings is controlled by Local Rule 7(e)(4) instead of 7(e)(3),  
2 which includes the other dispositive motions such as summary judgment and motions to  
3 dismiss. Although the Janaszaks are correct that 7(e)(3) does not include motions for  
4 judgment on the pleadings<sup>1</sup>, the length of Defendants' brief is irrelevant as set forth  
5 below. Therefore, the Court denies the Janaszaks' request as moot.

6 **B. Motion for Judgment**

7 After the pleadings are closed—but early enough not to delay trial—a party may  
8 move for judgment on the pleadings. Fed. R. Civ. P. 12(c).

9 In this case, Defendants move for judgment under the theory that the Janaszaks  
10 should be estopped from asserting any claim that they did not disclose in their bankruptcy  
11 proceeding. Dkt. 11 at 12–13. At the commencement of bankruptcy, a debtor must  
12 disclose all of his assets to be included in the bankruptcy estate for the potential benefit of  
13 creditors. 11 U.S.C. § 521(1); *see also Cusano v. Klein*, 264 F.3d 936, 945–46 (9th Cir.  
14 2001). The bankruptcy estate includes all the debtor's potential claims or causes of  
15 action that existed at the time he or she filed for bankruptcy. 11 U.S.C. § 541(a)(1); *see*  
16 *also In re Swift*, 129 F.3d 792, 795 (5th Cir. 1997); *In re Coastal Plains, Inc.*, 179 F.3d  
17 197, 208–208 (5th Cir. 1999) (“[i]t goes without saying that the Bankruptcy Code and  
18 Rules impose upon bankruptcy debtors an express, affirmative duty to disclose all assets,  
19 *including contingent and unliquidated claims.*”) (italics in original). A debtor need only  
20 have “knowledge enough of the facts to know that a cause of action exists during the

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21  
22 <sup>1</sup> Comments on the revisions for the Local Rules are due this Friday and a suggestion for  
revising 7(e)(3) to include motions for judgment on the pleadings will be made.

1 pendency of the bankruptcy.” *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778,  
2 783 (9th Cir. 2001).

3 A party’s failure to disclose causes of action may result in judicial estoppel.  
4 “[I]n the bankruptcy context, a party is judicially estopped from asserting a cause of  
5 action not raised in a reorganization plan or otherwise mentioned in the debtor’s  
6 schedules or disclosure statements.” *Id.* at 783; see also *Hay v. First Interstate Bank of*  
7 *Kalispell*, 978 F.2d 555, 557 (9th Cir. 1992); *Coastal Plains*, 179 F.3d at 208 (debtor is  
8 barred from bringing claims not disclosed in its bankruptcy schedules); *Oneida Motor*  
9 *Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 419 (3d Cir. 1988) (debtor’s failure to  
10 list potential claims against a creditor “worked in opposition to preservation of the  
11 integrity of the system which the doctrine of judicial estoppel seeks to protect,” and  
12 debtor was estopped by reason of such failure to disclose).

13 In this case, there is no dispute that the Janaszaks failed to disclose their current  
14 causes of action in their bankruptcy matter. The Janaszaks, however, present two  
15 arguments for why they should not be estopped. First, the Janaszaks argue that they  
16 “were not aware of any of their potential claims against the Defendants until after  
17 February 2012, when they, like millions of other Americans, were informed of the  
18 mortgage settlement agreement.” Dkt. 13 at 7. The standard is not knowledge of the  
19 claims, it is knowledge of the facts. *Hamilton*, 270 F.3d at 783. The alleged assignments  
20 (Complaint, ¶¶ 19–21) and the initial foreclosure proceeding occurred before the  
21 Janaszaks filed their bankruptcy action. Therefore, the Janaszaks’ argument is without  
22 merit.

1 Second, the Janaszaks argue that intent is an element the Court should consider  
2 when a party fails to disclose its claims. Dkt. 13 at 7. Although the Janaszaks cite an  
3 unpublished opinion from the District Court of Oregon regarding the interpretation of an  
4 insurance contract, the Janaszaks fail to provide, and the Court is unaware of, any binding  
5 authority for this proposition. Therefore, the Janaszaks' argument is without merit.

6 Based on the foregoing analysis, the Court finds that the Janaszaks are judicially  
7 estopped from bringing the majority of the claims in their complaint. Thus, the only  
8 remaining claim or claims would arise from the post-bankruptcy foreclosure process.  
9 The Janaszaks' complaint, however, does not coherently separate these claims and the  
10 Janaszaks have requested leave to amend. Therefore, the Court grants Defendants'  
11 motion and grants the Janaszaks leave to amend consistent with this opinion.

#### 12 IV. ORDER

13 Therefore, it is hereby **ORDERED** that Defendants' motion for judgment on the  
14 pleadings (Dkt. 11) is **GRANTED**. The Janaszaks may file an amended complaint no  
15 later than October 12, 2012. Failure to file an amended complaint without good cause  
16 will result in dismissal of this action.

17 Dated this 1<sup>st</sup> day of October, 2012.

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20 BENJAMIN H. SETTLE  
21 United States District Judge  
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